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# Sivarajah & Ors v Yeoh Eng Huat Andrew & Ors

HIGH COURT (KUALA LUMPUR) — CIVIL SUIT NO D2-22-1407-1993
RICHARD TALALLA J
8 JUNE 1994

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***Civil Procedure*** *— Joinder of causes of action — Whether plaintiff should have brought only one action — Whether court should order consolidation of all actions — Rules of the High Court 1980 O 15 rr 1 & 5*

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The plaintiffs applied for declarations that they were the duly appointed directors of a certain company and that the appointment of the defendants to their said offices was null and void and for an injunction restraining the defendants from holding themselves out or acting in their respective offices, damages, interest and costs. At the same time, the plaintiffs commenced another two actions in the same

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division of the High Court. In all three actions, the same parties, who were represented by the same solicitors, claimed against the same defendants the same relief, on the same grounds based on similar facts but in respect of three separate companies.

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**Held**, ordering that the three actions be consolidated as one action and that the principal action shall be the present action:

(1) Under O 15 r 1(1)(a) of the Rules of the High Court 1980 ('the RHC') read with O 15 r 5(1), a plaintiff may in one action claim relief against the same defendant in respect of more than one cause of action if the plaintiff claims, and the defendant is alleged

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to be liable, in the same capacity in all the causes of action. But if it appears to the court that the joinder of causes of action or of parties may embarrass or delay the trial or is otherwise inconvenient, the court may order separate trials or make such other order as may be expedient.

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(2) Here the plaintiffs or their solicitors had not given any explanation as to why it was thought fit to bring three actions instead of one, applying O 15 r 1 of the RHC, and there was no suggestion that by reference to O 15 r 5, to bring one action would embarrass or delay the trial or be otherwise inconvenient.

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**[Bahasa Malaysia summary**

Plaintif telah memohon untuk deklarasi bahawa mereka adalah pengarah suatu syarikat tertentu yang telah dilantik seperti yang sepatutnya dan bahawa pelantikan defendan untuk menyandang jawatan mereka tersebut adalah batal dan tidak sah dan untuk suatu

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injunksi untuk menghalang defendan daripada mengemukakan diri atau menjalankan fungsi jawatan mereka, ganti rugi, faedah dan kos. Pada masa yang sama, plaintif telah memulakan dua lagi tindakan di

bahagian sama Mahkamah Tinggi. Di dalam ketiga-tiga tindakan itu, pihak yang sama, yang diwakili oleh peguamcara yang sama, menuntut relief yang sama terhadap defendan yang sama, atas alasan yang sama berdasarkan fakta yang serupa tetapi berkenaan dengan tiga buah syarikat yang berasingan.

**Diputuskan**, memerintahkan supaya tiga tindakan itu disatukan sebagai satu tindakan dan bahawa tindakan ini akan dijadikan tindakan utama:

(1) Di bawah A 15 k 1(1)(a) Kaedah-Kaedah Mahkamah Tinggi 1980 ('KMT itu') dibaca dengan A 15 k 5(1), seseorang plaintif boleh di dalam satu tindakan menuntut relief terhadap defendan yang sama berkenaan dengan lebih daripada satu kausa tindakan jika plaintif menuntut, dan defendan dikatakan menanggung liabiliti, dalam keupayaan yang sama di dalam semua kausa tindakan. Tetapi jika ternyata kepada mahkamah bahawa percantuman kausa tindakan atau pihak mungkin menghalang atau melengahkan perbicaraan itu atau selainnya menyusahkan, mahkamah boleh memerintahkan diadakan perbicaraan berasingan atau membuat apa-apa perintah lain sebagaimana yang suai-manfaat.

(2) Di sini plaintif atau peguamcara mereka tidak memberikan sebarang penjelasan mengapa difikirkan sesuai untuk membawa tiga tindakan dan bukannya satu, memakai A 15 k 1 KMT itu, dan tidak ada cadangan bahawa merujuk kepada A 15 k 5, jika satu tindakan dibawa, itu akan menghalang atau melengahkan perbicaraan itu atau selainnya menyusahkan.]

**Notes**

For a case on joinder of actions, see 2 *Mallal's Digest* (4th Ed) para 1211.

**Cases referred to**

*Cropper v Smith* (1884) 26 Ch D 700 (folld)
*Edward Goh Geok Seng v Dunstan Dumpangol & Ors* [1989] 2 MLJ 119 (not folld)
*Poulett v Hill* [1893] 1 Ch 277 (folld)
*Searle v Choat* [1884] 25 Ch D 723 (refd)
*Williams v Hunt* [1905] 1 KB 512 (folld)

**Legislation referred to**

Courts of Judicature Act 1964
Rules of the High Court 1980 O 15 rr 1(a), 5(1)

*G Sri Ram* (*Sri Ram & Co*) for the plaintiffs.
*Suhendran Sockanathan* (*Patsy Chin Yew Khim* with him) (*Abdul Aziz, Ong & Co*) for the defendants.

**Richard Talalla J**: This action was commenced on 20 December 1993 by the plaintiffs through their solicitors. In it the plaintiffs claim that they are the duly appointed directors of a certain company and are its duly constituted board of directors, that the first and second defendants holding themselves out as directors of the company had purported to remove the fourth and fifth plaintiffs as directors of the company on the ground that they had ceased to be so owing to their failure to acquire the necessary qualification shares in accordance with the articles of association of the company, that the article in question was deleted and substituted by one stating that a director shall not be required to hold any share qualification, that these two defendants purported to appoint the third defendant as secretary of the company and that despite demand the defendants continue in their respective purported offices. The plaintiffs seek by way of relief declarations that they are the duly appointed directors of the company and that the appointment of the defendants to their said offices is null and void and an injunction restraining the defendants from holding themselves out or acting in their respective offices, damages, interest and costs.

On the same day and effectively at the same time, the plaintiffs through the same solicitors commenced another two actions in the same division of this court as evidenced by consecutive registered numbers of those two actions, to wit D3–22–1408–1993 and D4–22–1409–1993. In all three actions the parties are the same and the pleadings also the same mutatis mutandis relative to [the] company, dates of meetings and wording of the articles of association in question, the effect of the articles however being the same. Thus to put it as succinctly as I can, in three separate consecutive actions commenced on the same day and at the same time in the same division of this court, the same plaintiffs represented by the same solicitors have claimed against the same defendants the same relief albeit in respect of three separate companies on the same grounds based on similar facts.

The plaintiffs had also caused to be filed in each of the three actions at the time of commencement thereof accompanied in each action by a certificate of urgency a summons-in-chambers for interim relief by way of injunction each of which said summonses was returned seriatim on 16 and 23 February and 6 June 1994 and awaits leisurely disposal unhindered by anyone.

Under O 15 r 1(1)(a) ('the said Rule') of the Rules of the High Court 1980 ('the said Rules') as read with r 5(1) of that Order a plaintiff may in one action claim relief against the same defendant in respect of more than one cause of action if the plaintiff claims, and the defendant is alleged to be liable, in the same capacity in respect of all the causes of action but if it appears to the court that the joinder of causes of action or of parties, as the case may be, may embarrass or delay the trial or is otherwise inconvenient, the court may order separate trials or make such other order as may be expedient. As I understand it the said Rule must be applied bearing in mind at all times the rule against multiplicity of proceedings. Not surprisingly the plaintiffs applied for an order for consolidation of the

three actions. When the application came on for hearing I asked why the three actions had been filed when in truth only one action should have been commenced. Counsel for the respective parties both thereupon conceded, and I believe rightly so, that only one action should have been commenced in the circumstances. I then said that the second and third actions in time should be struck out and the statement of claim in this the first action amended to include the claims in the second and third actions and that by reason of multiplicity of proceedings there was an abuse of the process of the court and prima facie costs thrown away would have to be paid by the solicitors personally. In fairness seeing that the point originated from the court and not desiring to take the solicitors by surprise the application was adjourned for further consideration.

At the resumed hearing senior counsel appeared for the plaintiffs and submitted as authority supporting the solicitors in commencing the three actions and the application for consolidation, the case of *Edward Goh Geok Seng v Dunstan Dumpangol & Ors* [1989] 2 MLJ 119, where the facts were to all intents and purposes the same as the facts here and the defendant had applied under O 18 r 19 and O 92 r 4 of the said Rules for an order that the plaintiff's action be struck out on the ground that it was an abuse of the process of the court. In dismissing the application the learned judge at p 120 said:

> ... I am satisfied that there is no improper purpose on the part of the plaintiff in filing the present action. Therefore, I cannot see how any question of abuse of the process of the court can be said to arise. Hence, ... the defendants' application is dismissed with costs ...
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> Costs are awarded against the defendants because, in my view, having regard to what I have said in para 4 above, their application is really unnecessary. The defendants' counsel knew very well that the plaintiff's application under O 29 r 1, which was under a certificate of urgency, ought to be disposed of as soon as possible in order to preserve the status quo and yet he filed the defendants' application and insisted that the application be heard first. Hence, his conduct has not only occasioned unnecessary costs but also unnecessary delay in the proceedings.

The decision on the face of it may well have been given per incuriam. There is nothing to indicate that the provisions of the said Rule were brought to the attention of the learned judge, which said Rule, as read with r 5(1) of O 15 along with the rule against multiplicity of proceedings which also appeared not to be before the judge, would have placed the onus on the plaintiff to explain why three actions instead of one were brought. Also in that case the learned judge would appear to have held a belief that the defendant in making his application was aiming at delaying the plaintiff's application for an injunction which was being brought on a certificate of urgency, a situation which does not arise in these proceedings for here it was the court itself that raised the question of multiplicity of proceedings and attendant abuse of process. Accordingly with respect I do not follow that decision.

A It is true that in our courts the adversary system is observed and the court acts as an umpire generally and does not go down into the ring and box with one or other of the contestants. However there are, in my view, instances when the court could and should enter the fray. The court will do so to prevent injustice being done. It will also so do, as in this case, to ensure that the practice and procedure prescribed for the due administration B of justice is properly observed. To my mind the court should certainly step in when non-observance overtly, as in this case, contributes to the backlog of cases presently so rife in our courts, delay, administrative pressure in our registry and the cost of litigation. That cost in these times is so prohibitively high it makes a farce of justice being available to all. In truth C it is available only to those who can afford it. A fortiori the court should supervise the machinery of justice and at every turn ensure that there is no delay and that the expense of litigation is kept to a minimum, in the hope that if not now then at some future time justice will be available to all who seek it.

D Not one word of explanation was forthcoming from the plaintiffs or their solicitors as to why it was thought fit to bring three actions instead of applying the said Rule and bringing one action. There was not the slightest suggestion that by reference to r 5 to bring one action would embarrass or delay the trial or be otherwise inconvenient.

E The rule against multiplicity of proceedings is seen in the Courts of Judicature Act 1964 and in particular the schedule thereto, para 11. In *Searle v Choat* [1884] 25 Ch D 723 at p 727, Cotton LJ in reference to English legislation said that the whole tenor of the Judicature Acts was to require all proceedings as far as possible to be taken in one action. In *Poulett v Hill* [1893] 1 Ch 277, CA at pp 280 and 281 Lindley LJ gave F judgment as follows:

> In this case the learned judge has made a mistake which is attributable to a wish to save costs. On 26 May 1891, the plaintiffs commenced against the defendant an action for foreclosure, and by the writ they claimed not only foreclosure but also, as the practice has been since the passing of the Judicature Acts, a personal order for payment. Under that writ an account G of what is due would be directed — an account which, being taken on the footing on which such accounts were always taken in Chancery, would include interest down to the date of the certificate, and an order would be made for personal payment of the amount found due. Before the Judicature Acts a personal order for payment could only be obtained by bringing a common law action, in which interest could only be recovered down to the H date of the writ, and a personal order for payment of the subsequent interest could only be obtained by a fresh action; but now that a personal order can be obtained for payment of what is found due on taking the account, such second action is unnecessary. In *Farrer v Lacy, Hartland & Co* 31 Ch D 42 at p 51 the form of judgment is given which was settled by the Court of Appeal. Whether this particular point was present to the mind of the court I is not quite clear; but a general form was settled giving a personal order for payment of what was found due for principal and interest on taking an account, so that the necessity for a subsequent action for interest is taken

> away. The plaintiffs then could in the first action have obtained a personal order for payment of all that was due to them for principal and interest, and the present action is unnecessary. It we were to affirm the order under appeal our decision would lead to bringing improper and vexatious actions; and, though I believe that the attempt to recover in the present action was well meant, it was a mistake.

In *Williams v Hunt* [1905] 1 KB 512 at p 513 the defendant sought a stay of proceedings in the King's Bench Division on the ground that the whole cause of action was the subject of an action pending in the Chancery Division. Collins MR at p 514 said:

> I am of opinion that execution must be stayed. It seems clear to me that this is an attempt to defeat what the Court of Appeal held to be the law in *Poulett v Hill.*
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> Where two separate remedies are possible, and a start is made by putting in force one of those remedies by a writ which would entitle the plaintiff to the relief he subsequently desires, he cannot by deliberately leaving that out of his claim reserve his right to ask for it in another proceeding. Where proceedings have been started, it is an abuse of the process of the court to divide the remedy where there is a complete remedy in the court in which the suit was first started.

That the facts in the English cases above-stated are distinguishable from the facts in this case is of no moment. The principle and the mischief it cures embraces all the cases including this. Indeed I believe it to be of universal application.

Now the plaintiffs are before the court by way of supplication. They want the three actions consolidated into one action, relief against the very mischief they have perpetrated by bringing three actions when they should have in the first place brought one action and thus obviated the necessity of applying to the court for an order of consolidation. As matters stand, by reason of the administrative practice in this division of the court of allocating actions to individual judges for disposal by reference to the registered number of the action, this action will be handled by me, the second action will be presided over by Dato' VC George J and the third action by Dato' Dr Zakaria Yatim J and could lead to contradictory judgments being given in each case. Obviously the situation must be remedied. Ordinarily I would have refused the application for an order for consolidation and instead struck out the two actions later in time with costs as indicated at the first hearing of this application. Certainly I would have done so had the plaintiffs' solicitors filed the three actions deliberately to increase costs. They seem however to have acted on the authority of *Edward Goh*'s case above-stated. In the circumstances of this case only and seeing also that senior counsel for the defendants had indicated that he was in agreement with the submission of counsel for the plaintiffs and was not opposing the application, I will not strike out the two later actions. *Cropper v Smith* (1884) 26 Ch D 700 was a case relating to amendment of pleadings. In that case at pp 710 and 711 Bowen LJ said that it is a well-established principle that the object of the court is to decide the rights of the parties,

and not to punish them for mistakes they make in the conduct of their cases and he, the learned judge, knew of no kind of error or mistake which, if not fraudulent or intended to overreach, the court ought not to correct, if it can be done without injustice to the other party. In the present case the damage has already been done and it seems futile in the circumstances to punish the plaintiffs by striking out the two later actions only to have them then to plead the matters in those actions in the first action.

Accordingly I hereby make an order in terms of the first numbered paragraph of the summons, namely, that the three numbered actions be consolidated and do proceed as one action. As to title of the consolidated action I make an order in terms of para (ii) of the summons and add that the principal action shall be this action. As to the matter raised in para (iii) of the application, namely, that one action be tried immediately after another I reserve the matter and accordingly adjourn the application to that extent. As to costs sought in para (iv) of the summons, as the application was not opposed I make no order as to the costs of the application and further order that plaintiffs and the defendants do pay their own costs heretofore and hereafter thrown away by reason of three actions being commenced instead of one action.

*Order accordingly.*

Reported by Anne Khoo